

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:NER:PEN:PHI:TL-N-4423-99
JCfee

date:

to: Chief, Appeals Division, Pennsylvania District
Attn: Lawrence O. Brown, Appeals Officer

from: Assistant District Counsel, Pennsylvania District, Philadelphia

subject: [REDACTED] EIN: [REDACTED] TY: [REDACTED]
Proper Title and Proper Party to Sign Form 907

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

You have requested that we review the advice that we rendered to the Examination Division in 1996 regarding the proper title to be shown on and the proper party to sign a Form 872.

[REDACTED] has claimed a refund for its [REDACTED] tax year. Consideration of the claim is presently pending in Appeals. Since the two year statute for the taxpayer to file suit for refund expires in [REDACTED], the parties propose to execute a Form 907 to extend the time period for bringing suit and allow Appeals to fully consider the case.

Facts

The Facts as we understand them are as follows:

[REDACTED] filed consolidated returns with its subsidiaries for the [REDACTED] tax year. [REDACTED] was the [REDACTED]% shareholder of [REDACTED]. According to your notes, [REDACTED] was formed prior to the [REDACTED] reorganization, but not part of the consolidated group for [REDACTED]. As part of a reorganization in [REDACTED] [REDACTED] became the parent company of both [REDACTED] and a former [REDACTED]

██████ subsidiary, ██████ in a transaction described by the taxpayer as qualifying under §351. From the taxpayer's notes to the financial statements describing the transaction, it appears that ██████ survived as a separate entity and "remained in existence" under Treas. Reg. §1.1502-75(d)(2)(i) or otherwise. After the transaction, the former shareholders of ██████ held ██████% of ██████ stock.

By memorandum dated February 2, 1996, we advised the Examination to secure a Form 872 titled for ██████ and signed by an officer of ██████ on behalf of that corporation. In a footnote, we suggested that it may be prudent to secure a consent as well from ██████. We later retracted this alternative position provided in the footnote, after further communications with the National Office. Accordingly, we agreed that only a consent titled for ██████ and signed by ██████ was appropriate.

The taxpayer has now prepared a Form 907 titled for ██████. However, the taxpayer has prepared the Form 907 be signed by ██████

Discussion

In your request, you do not indicate whether you disagree or have some reservation with our prior advice to Examination Division. Without a statement of your concerns, it is not clear to us why you have requested that we review the soundness of our prior work product.

Nevertheless, we have reviewed our February 2, 1996 memorandum, related Email messages from the National Office, and notations of further advice to Exam, as requested. We see no apparent problem with our advice. Consistent with our prior advice, the Form 907 should be signed by an officer of ██████ on behalf of ██████, rather than ██████ as suggested by the taxpayer.

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(b)(5)(AC), (b)(7)a
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██
██

This concludes our response and recommendation. Please feel free to call Attorney James C. Fee, Jr. at 215-597-3442 with any additional questions you may have. We are forwarding a copy of this advice to the Assistant Regional Counsel (Tax Litigation)

(CC:NER) and to the Office of Assistant Chief Counsel (Field Service) (CC:DOM:FS) for mandatory 10 day post review.

JOSEPH M. ABELE
Assistant District Counsel

cc: Assistant Regional Counsel (Tax Litigation) (CC:NER)
Office of Assistant Chief Counsel (Field Service) (CC:DOM:FS)

Attachments